

By: Martha Rose
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

CENTRAL LOUISIANA ELECTRIC
COMPANY, INC.
Pineville, Louisiana,

and

CITY OF COLORADO SPRINGS
Colorado Springs, Colorado,

and

COMMONWEALTH EDISON COMPANY
Chicago, Illinois,

and

GENERAL MOTORS CORPORATION
Detroit, Michigan,

and

ILLINOIS POWER COMPANY
Decatur, Illinois,

and

INTERSTATE POWER COMPANY
Dubuque, Iowa,

and

IOWA PUBLIC SERVICE COMPANY
Sioux City, Iowa,

and

KANSAS POWER & LIGHT
COMPANY
Topeka, Kansas,

and

Docket No. 87-F-0007



ADMINISTRATIVE ORDER

ON CONSENT



40024332
SUPERFUND RECORDS

MISSOURI PUBLIC SERVICE
COMPANY
Kansas City, Missouri,

and

NEW ENGLAND POWER SERVICE
COMPANY
Westborough, Massachusetts,

and

NEW ORLEANS PUBLIC SERVICE,
INC./LOUISIANA POWER & LIGHT
COMPANY
New Orleans, Louisiana,

and

OKLAHOMA GAS & ELECTRIC
COMPANY
Oklahoma City, Oklahoma,

and

OMAHA PUBLIC POWER DISTRICT
Omaha, Nebraska,

and

SOUTHWESTERN ELECTRIC POWER
COMPANY
Shreveport, Louisiana,

and

WEST TEXAS UTILITIES COMPANY
Abilene, Texas,

and

CAMPBELL SOUP COMPANY
Camden, New Jersey,

RESPONDENTS.

Proceedings Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, as amended by
the Superfund Amendments and
Reauthorization Act of 1986,
42 U.S.C. § 9606(a).

ARTICLE I - INTRODUCTION

A. Jurisdiction

1. This Administrative Order on Consent ("CONSENT ORDER") is issued by the Regional Administrator of Region VII of the United States Environmental Protection Agency ("EPA" or "Agency") to Central Louisiana Electric Company, Inc., City of Colorado Springs, Commonwealth Edison Company, General Motors Corporation, Illinois Power Company, Interstate Power Company, Iowa Public Service Company, Kansas Power & Light Company, Missouri Public Service Company, New England Power Service Company, New Orleans Public Service, Inc./Louisiana Power & Light Company, Oklahoma Gas & Electric Company, Omaha Public Power District, Southwestern Electric Power Company, West Texas Utilities Company, and Campbell Soup Company (all of the above hereinafter referred to as the "Respondents"), pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, 42 U.S.C. § 9606(a), and Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 et seq., and further delegated to the Regional Administrator by EPA Delegations Nos. 14-14-A and 14-14-C, dated April 16, 1984, and February 26, 1987, respectively. Pursuant to

Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the State of Missouri has previously been notified of this CONSENT ORDER.

2. Each of the Respondents agrees to undertake all actions required by the terms and conditions of this CONSENT ORDER but not to take any other action thereby. The Respondents neither admit nor deny the findings of fact or conclusions of law or the determinations made herein; however, the Respondents agree not to challenge said findings, conclusions or determinations for purposes of this CONSENT ORDER only, and agree not to contest EPA's jurisdiction with respect to this CONSENT ORDER, except as may otherwise be provided for herein. The Respondents reserve all rights each may have to object to, contest, or defend against any allegation of violation of this CONSENT ORDER.

B. Statement of Purpose

1. In order to contribute to the efficient performance of any final remedial actions (which are not to be implemented under the terms of this CONSENT ORDER and to which Respondents do not hereby commit to undertake) at a facility located in Holden, Missouri, where Martha C. Rose Chemicals, Inc. operated a polychlorinated biphenyl (hereinafter "PCB") brokerage, processing and treatment facility (the Holden facility), the parties have entered into this CONSENT ORDER for the purpose of conducting the following activities:

(A) To initiate and complete the removal of PCBs and PCB items, as specifically described in Article V.A., herein, from the Holden facility to EPA-authorized disposal facilities; and

(B) To fully determine the nature and extent of releases or threats of releases of hazardous substances, including PCBs, into the environment at and contiguous to and from the Holden facility (hereinafter "Remedial Investigation" or "RI"), and to evaluate alternatives for appropriate remedial action to prevent or mitigate the release or threatened release of PCBs at and contiguous to and from the Holden facility (hereinafter "Feasibility Study" or "FS") (collectively referred to as "RI/FS").

2. Final remedial actions, consistent with the provisions of CERCLA, as amended by SARA, and the National Contingency Plan (NCP), 40 C.F.R. Part 300, and consistent with the RI/FS required by this CONSENT ORDER are not addressed in nor required by this CONSENT ORDER.

C. Parties

1. This CONSENT ORDER shall be binding upon each of the Respondents, their successors, assigns, subsidiaries, as set forth herein, and EPA; and upon all persons, agents, contractors and consultants acting under or for either the Respondents or EPA or both in carrying out the actions required by this CONSENT ORDER.

2. The Respondents shall provide a copy of this CONSENT ORDER to each contractor, subcontractor, laboratory, and consultant retained to conduct any portion of the work performed pursuant to this CONSENT ORDER prior to said contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted under this CONSENT ORDER.

3. In the event of any change in ownership, or corporate or partnership status of any Respondent, such Respondent shall provide a copy of this CONSENT ORDER to such transferee in interest, notify EPA of such change in ownership, corporate or partnership status, and provide EPA with a copy of a transmittal letter to the new owner, corporation, partnership, or other legal entity which evidences that a copy of this CONSENT ORDER was provided to them by such Respondent.

ARTICLE II - FINDINGS OF FACT

Without administrative hearing, trial or other adjudication of any issues of fact, and without any admission of fact by Respondents, EPA has found the following.

1. Martha C. Rose Chemicals, Inc. (hereinafter "Rose, Inc.") operated a PCB brokerage, processing and treatment facility located at 500 W. McKissock in Holden, Missouri, where PCBs were released as a result of activities of Rose, Inc., its employees, agents or other representatives.

2. Beginning in early 1983 through 1986, Rose, Inc. was engaged in the business of brokerage of PCBs and PCB

items, processing of PCB capacitors and transformers for disposal, and decontamination of mineral oil dielectric fluids containing PCBs.

3. Pursuant to the authority granted to EPA under Section 6(e) of the Toxic Substances Control Act (hereinafter "TSCA"), and regulations promulgated thereunder, Rose, Inc. was granted four approvals to conduct the following activities involving PCBs:

A. to decontaminate mineral oil dielectric fluids containing PCBs at concentrations equal to or less than 10,000 parts per million (ppm) (effective on March 15, 1983, and expired on March 15, 1986);

B. to process PCB capacitors for disposal (effective on October 15, 1983 and revoked by EPA by letter dated July 9, 1986);

C. to process PCB transformers for disposal (effective on July 1, 1984, and revoked by EPA by letter dated July 9, 1986); and

D. to simulate the loaded conditions of in-service use in order to reclassify electrical transformers containing greater than 500 ppm PCBs.

These TSCA approvals only allowed Rose, Inc. to decontaminate and process PCB fluids to less than 2 ppm; to disassemble PCB transformers and capacitors as a waste volume reduction method; to reclassify PCB transformers; and to arrange for the off-site

disposal of transformers and capacitors after testing showed PCB levels at or less than 10 ug/100 cm². EPA did not grant Rose, Inc. any other approvals or permits to manage any other substances.

4. The express terms of each approval listed in paragraph 3, except for the approval described in Article II. 3.D., required Rose, Inc. to comply with all applicable federal, state and local environmental laws, regulations and standards.

5. Between 1983 and 1986, the Respondents and other entities' PCB materials were shipped to the Holden facility for proper storage, processing, treatment and disposal under TSCA. Rose, Inc. did not properly manage, handle, and arrange for the lawful disposal of PCBs and PCB items shipped to its facility. The Respondents assert that Rose, Inc. was also in violation of its contractual obligation to each Respondent for failing to properly manage, handle and arrange for the lawful disposal of PCBs and PCB items.

6. Rose, Inc. failed to manage, handle and dispose of PCBs and PCB items in accordance with the applicable federal PCB regulations contained at 40 C.F.R. Part 761 and the TSCA approvals specified in Article II.3.

7. EPA personnel conducted compliance inspections at the Holden facility on November 3 and 4, 1983; August 7-15, 1984; December 19, 1985; January 7, 1986; February 26, 1986; and March 17, 1986. Each such inspection revealed violations

of applicable PCB regulatory requirements, including violations of requirements for the storage and marking of PCBs and PCB items (40 C.F.R. §§ 761.65 and 761.40, respectively); inadequate record keeping (40 C.F.R. § 761.180); and violations of requirements for the disposal and distribution in commerce of PCBs and PCB items (40 C.F.R. §§ 761.60 and 761.20(c), respectively). In response to the above-referenced violations detected during the November 1983 inspection, EPA filed an Administrative Complaint and Notice of Opportunity for Hearing against Rose, Inc. on or about March 26, 1984. The EPA and Rose, Inc. subsequently entered into a Consent Agreement and Final Order, effective June 26, 1984, wherein Rose, Inc. agreed to pay a penalty and take specific actions to come into compliance with the PCB rules and regulations. In response to the above-referenced violations detected during the August 1984 inspection, EPA filed a second Administrative Complaint and Notice of Opportunity for Hearing against Rose, Inc. on or about February 25, 1985. EPA and Rose, Inc. subsequently entered into a second Consent Agreement and Final Order, effective September 27, 1985, wherein Rose, Inc. agreed to pay a civil penalty and take specific actions to come into compliance with the PCB rules and regulations. Rose, Inc. failed to comply with the terms of both Consent Agreements and Final Orders, with the PCB rules and regulations, and with the EPA approvals specified in Article II.3.

8. Beginning in January 1985, the Occupational Safety and Health Administration (OSHA) conducted inspections at the portions of the Holden facility used by Rose, Inc. and American Steel Works, Inc. Based on air and wipe samples taken during the inspections, OSHA issued a citation on or about July 19, 1985, to Rose, Inc. and American Steel Works, Inc. which alleged violations of OSHA standards and assessed civil penalties.

9. Investigations conducted by EPA and/or the Missouri Department of Natural Resources have detected PCBs; in fauna samples downstream from the Holden facility, in sewerage sludge at the City of Holden's publicly-owned treatment works, and in branch and creek sediments downstream from the Holden facility. EPA believes these detected PCBs resulted from releases of PCBs at the Holden facility.

10. In April and May 1986, Rose, Inc. notified, among others, certain Respondents and EPA expressing its unwillingness to come into compliance with the PCB rules and regulations, 40 C.F.R. Part 761, and to properly dispose of PCB and PCB items at the Holden facility.

11. On March 1, 1986, Rose, Inc. ceased operations, and on or near that date abandoned the Holden facility.

12. On or about May 23, 1986, EPA unilaterally issued an Administrative Order (Docket No. 86-F-0006), pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to Martha C. Rose

Chemicals, Inc., American Steel Works, Inc., W.C. Carolan Company, Inc., Walter C. Carolan, and Environmental Technology, Inc., among others, which required: (1) the implementation of certain actions in response to a PCB spill that occurred on or about May 13, 1986; (2) the implementation of certain measures to prevent environmental contamination from similar PCB spills; (3) the establishment of site security, including emergency warning and notification systems, construction of a chainlink security fence, and the posting of the Holden facility; and (4) the submission of a detailed inventory/disposal plan for all PCBs and PCB items at the Holden facility. This Order also prohibited the named parties from removing PCBs and PCB items from the Holden facility without EPA's prior approval of a plan to properly decontaminate or dispose of such PCBs and PCB items. The above-named parties refused to comply with the terms and conditions of this Administrative Order. By letters dated June 13 and June 27, 1986, EPA notified the above-named parties that EPA would consider other actions based on the said parties' refusal to comply with this Order.

13. Upon the refusal of the responsible parties identified in Article II.12. to undertake appropriate response actions pursuant to said Administrative Order (Docket No. 86-F-0006), EPA began negotiations with the Respondents, who had formed a group commonly known as the Rose Chemicals Steering Committee (the "Committee") to undertake appropriate response actions at the Holden facility.

14. As a result of the said negotiations, EPA and certain members of the Committee, the City of Holden, Missouri, and Lear Siegler, Inc. entered into an Administrative Order on Consent (AOC), Docket No. 86-F-0019, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), wherein these members of the Committee (namely, the "Generator Respondents") agreed to perform initial response activities at the Holden facility including the stabilization and preliminary assessment of the site. Generally, those activities included:

A. Release Assessment and Containment, wherein the location and extent of any release or threatened release of PCBs which posed an immediate danger to human health or welfare or the environment would be identified and actions taken to contain any such release;

B. Site Stabilization, wherein specific actions were to be taken to stabilize the site and reduce immediate risks of releases of PCBs that threatened human health or welfare or the environment, as determined by EPA's On-Scene Coordinator (OSC);

C. Site Security, wherein specific site actions were to be taken to restrict access and provide security for the site; and

D. Site Evaluation, wherein the Generator Respondents were, from available information, to determine the nature and amounts of contaminated materials at the

Holden facility and perform studies to further define the nature and extent of contamination at the site and to gather data necessary to determine and support final response activities.

15. To implement the provisions of the AOC, Docket No. 86-F-0019, the Generator Respondents, pursuant to Attachment A of the said AOC, which was entitled "STATEMENT OF WORK - INITIAL PHASE MARTHA C. ROSE CHEMICAL, INC. SITE, HOLDEN, MO.," were to conduct immediate response actions and to submit work plans and implement them upon EPA's approval. Work required by the said AOC, Docket No. 86-F-0019, either has been implemented or is in the process of being implemented and/or completed. Certain provisions and requirements of the said AOC, Docket No. 86-F-0019, shall be incorporated into this CONSENT ORDER as described in Article V.C.

16. Based on an inventory of PCBs and PCB items at the Holden facility, conducted pursuant to the AOC, Docket No. 86-F-0019, contractors for the Respondents have identified the following approximate quantity generator-sent PCBs and PCB items at the Holden facility.

<u>Category</u>	<u>Pounds</u>
Soils	791,310 lbs.
Sludges	182,346 lbs.
Transformers	1,887,756 lbs.
Transformer Parts	160,905 lbs.
Whole capacitors	1,486,341 lbs.
Capacitor cores	2,002,261 lbs.
Capacitor parts	167,525 lbs.
Liquids	4,746,011 lbs.
Miscellaneous debris	<u>2,034,640 lbs.</u>
Total Inventory Weight	13,459,095 lbs.

17. In addition to the generator-sent PCBs and PCB items referred to in Article II.16., additional PCB-contaminated items exist at the Holden facility which must be properly decontaminated and/or disposed. These non-generator sent PCB-contaminated items were returned by EPA to the Holden facility from locations in Johnson County, Missouri and Kansas City, Missouri. EPA believes that these PCB-contaminated items became contaminated as a result of contact with generator-sent PCBs. These PCB-contaminated items were moved from the Holden facility by persons known to be associated with Martha C. Rose Chemicals, Inc. in violation of an express provision prohibiting the removal of PCBs and PCB items from the Holden facility. This provision is in the Administrative Order, Docket No. 86-F-0006, more fully described in Article II.12., supra.

18. In addition to PCBs and PCB items referred to in Article II.16. and 17., EPA believes the following PCB contamination exists at the Holden facility.

A. PCB-contaminated equipment and other PCB-contaminated items are present at the Holden facility. The equipment and items were not sent to the Holden facility by the Respondents or other responsible parties, but became contaminated as a result of Rose, Inc.'s activities or as a result of activities by persons known to be associated with Rose, Inc.

B. Surface soil contamination exists on the facility grounds as a result of spills or releases of PCBs, indicating the possibility of some sub-surface contamination.

C. Current and past investigations have revealed the presence of buried materials which may or may not be contaminated with PCBs.

D. Water contained in a warehouse pit, which may be an environmental pathway to groundwater, is contaminated with low concentrations of PCBs.

E. Spills or releases of PCBs have occurred causing contamination of surface waters and pond areas at the Holden facility.

F. The warehouse, wherein the significant portion of PCBs and PCB items are presently located, has been contaminated with PCBs as a result of Rose, Inc.'s activities.

19. On June 20, 1986, certain utility creditors, to wit: Southwestern Electric Power Company, Central Louisiana Electric Company, Inc., The Kansas Power & Light Company and Illinois Power Company filed an involuntary petition in the United States Bankruptcy Court, Western District of Missouri, against Martha C. Rose Chemicals, Inc. Initially, Rose, Inc. did not oppose this petition. A trustee, John R. Stonitsch, was appointed. The trustee received less than all the records of the bankrupt Rose, Inc. On March 2, 1987, the Trustee and petitioning creditors filed a joint motion for an order nunc pro tunc amending the caption in the involuntary petition to

include alter egos of the debtor. On April 1, 1987, a joint stipulation was filed by which the alter ego entities and individuals confessed the allegations of the motion. The Court granted the motion. The Findings of Fact and Conclusions of Law were filed on June 18, 1987. The name of the debtor now includes the alter egos, to-wit: Martha C. Rose Chemicals, Inc., a Missouri corporation, also doing business as American Steel Works, Inc., a Kansas corporation, and as W.C. Carolan Company, Inc., a Missouri corporation, and as Dust Suppression Systems, Inc., a Missouri corporation, and as Koenig Manufacturing, Inc., a Missouri corporation, and as the Trova Company, a Missouri corporation, and as I.D.C. Limited, a corporation of the Commonwealth of the Bahamas, and Walter C. Carolan, Jr., an individual, and James Bryan Carolan, an individual, its alter egos, Debtors.

20. Polychlorinated biphenyls (PCBs) are defined as any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance (40 C.F.R. § 761.3). PCBs have traditionally been used as dielectric and cooling fluids in electrical equipment.

21. Depending upon concentration, degree of chlorination, and duration of exposure, PCBs may cause harmful effects to vegetation and may cause illness, disease, or

other harmful effects to animal life or humans via oral and/or dermal exposure through air transport of PCB-contaminated dust or direct contact.

22. The Holden facility is located within the city limits of Holden, Missouri in a mixed use business, agricultural, and residential area. More specifically, two sides of the Holden facility abut residential development, one side abuts agricultural land, and one side abuts other active business entities.

ARTICLE III - CONCLUSIONS OF LAW

Without administrative hearing, trial or other adjudication of any conclusion of law, without any admission of the following conclusions of law by Respondents, EPA has found as follows.

1. Respondents are each a "person" as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(21).

2. The Holden facility is a "facility" within the meaning of Section 101(9) of CERCLA, as amended, 42 U.S.C. § 9601(9).

3. The PCBs and PCB items at the Holden facility or which have been released at or from the said facility are "hazardous substances" as defined in Section 101(14) of CERCLA, as amended, 42 U.S.C. § 9601(14).

4. The actual and potential for spillage, leakage and escaping of PCBs at and from the Holden facility and the

presence of PCBs in grounds at and contiguous to the Holden facility constitute an actual or a threat of "release" into the environment as defined by Sections 101(22) and 106(a) of CERCLA, as amended, 42 U.S.C. §§ 9601(22) and 9606(a).

5. The activities described in Article V.A., constitute "removal" actions as defined by Section 101(23) of CERCLA, as amended, 42 U.S.C. § 9601(23).

ARTICLE IV - DETERMINATIONS

Based on the foregoing findings of fact and conclusions of law, and upon a review of pertinent records, the Regional Administrator has determined that:

A. there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of an actual or threatened release of hazardous substances namely, PCBs, at or from the Holden facility;

B. in order to protect public health and welfare and the environment, it is necessary that the response actions set forth and required by this CONSENT ORDER be taken to mitigate the release and/or threat of release of PCBs from or at the Holden facility;

C. the actions required by the terms of this CONSENT ORDER are in the public interest and consistent with the National Contingency Plan, 40 C.F.R. Part 300; and

D. the Respondents, who will undertake the removal actions and conduct the RI/FS, as required by Article V of this CONSENT ORDER, are qualified to undertake such activities and will do so in a proper manner.

ARTICLE V - ORDER

The Respondents agree to undertake all actions required by the provisions of this CONSENT ORDER and the Respondents acknowledge that each is individually liable for compliance with the applicable requirements of this CONSENT ORDER. All work performed pursuant to this CONSENT ORDER shall be under the direction of qualified personnel. The Respondents shall notify EPA as to the identity of such personnel and of any contractors and subcontractors to be used in carrying out the activities described in the attached Statement of Work and obtain EPA's approval prior to their use.

Based on the foregoing, it is therefore AGREED and ORDERED as follows.

A. Removal Activities.

1. The removal actions identified in Attachment A, "STATEMENT OF WORK, REMOVAL OF PCB WASTES, MARTHA C. ROSE CHEMICALS, INC., HOLDEN, MO.," (hereinafter, "SOW") which is incorporated herein in its entirety by this reference, shall be conducted in accordance with the PCB rules and regulations, 40 C.F.R. Part 761, unless otherwise specifically provided for herein.

2. Within fifteen (15) work days of the effective date of this CONSENT ORDER, the Respondents shall submit a proposed time schedule for implementation of activities undertaken pursuant to the SOW. Such time schedule is subject to EPA review, modification and approval. The EPA shall complete its review of such schedule in an expeditious manner and shall notify the Respondents in writing of EPA's approval or disapproval of the schedule or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the schedule. Upon Respondents' receipt of any EPA disapproval, the provisions of Article VI.J., Resolution of Disputes, shall apply.

3. Within fifteen (15) work days of the date (as approved by EPA under Article V.A.2.) of the award of the primary contract to conduct the removal actions, or within thirty (30) work days of the effective date of this CONSENT ORDER, whichever is sooner in time, the Respondents shall submit a Work Plan for implementation of all removal actions conducted pursuant to this CONSENT ORDER and the SOW. The Removal Work Plan shall be the implementation instructions which Respondents' contractor(s) and/or subcontractor(s) will follow in conducting the removal actions pursuant to this CONSENT ORDER and shall include, at a minimum; details on what

and how PCB materials/wastes will be removed from the Holden facility, where materials will be sent, the documentation and records to be maintained relating to the removal actions, and safety procedures to be utilized during the removal actions. The Removal Work Plan is subject to EPA review, modification and approval. The EPA shall complete its review of the Removal Work Plan in an expeditious manner and shall notify the Respondents in writing of EPA's approval or disapproval of the Removal Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the Removal Work Plan. Upon Respondents' receipt of any EPA disapproval, the provisions of Article VI.J., Resolution of Disputes, shall apply.

B. Remedial Investigation/Feasibility Study Activities.

1. The Respondents shall develop a Work Plan for, and conduct, a RI/FS relevant to the selection of final remedial actions at the Holden facility. The Respondents shall reimburse EPA for any costs incurred in connection with EPA, its employees, agents, contractors, or other authorized representatives, in overseeing and reviewing the development of the RI/FS Work Plan and implementation or conduct of said RI/FS. Such reimbursement shall be in accordance with Article VI.D., herein.

2. The development of the RI/FS Work Plan and the conduct of the RI/FS, after EPA's approval of the said Work Plan, shall be in accordance with the National Contingency Plan, 40 C.F.R. Part 300. The FS shall use applicable technical parameters set forth in EPA's "Polychlorinated Biphenyls Spill Cleanup Policy," 52 Fed. Reg. 10688 et seq. Upon EPA's approval of the RI/FS Work Plan, said Work Plan shall be made part of and be incorporated into this CONSENT ORDER as Attachment "B".

3. The RI shall address, at a minimum, the following matters with primary attention to PCBs:

- (A) surface contamination of soils;
- (B) surface water/sediment contamination;
- (C) groundwater contamination;
- (D) subsurface contamination; and
- (E) a full characterization of the contamination of the onsite structures, buildings, concrete, pits, floors, curbing and PCB items and other PCB-contaminated materials specifically excluded from the SOW and identified in Article II.17. and Article II.18.A.

4. Within ninety (90) calendar days of the effective date of this CONSENT ORDER, Respondents shall submit the RI/FS Work Plan which shall include all appropriate activities set forth in EPA's "Guidance on Remedial Investigations Under CERCLA (June 1985)" and EPA's "Guidance on Feasibility

Studies Under CERCLA (June 1985)," and a proposed time schedule for implementation of each discrete RI/FS activity. The RI/FS Work Plan is subject to EPA review, modification and approval. The EPA shall complete its review of such Work Plan in an expeditious manner and shall notify the Respondents in writing of EPA's approval or disapproval of the Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan. Upon Respondents' receipt of any EPA disapproval, the provisions of Article VI.J., Resolution of Disputes, shall apply.

C. Incorporation of Administrative Order on Consent, Docket No. 86-F-0019

1. The work required by the Administrative Order on Consent (AOC), Docket No. 86-F-0019, which is incorporated herein by reference as Attachment C, has either been implemented or is near completion. The following described actions or activities required by the said AOC shall be incorporated herein and shall, upon the effective date of this CONSENT ORDER, either be undertaken and/or implemented, if not already implemented, by the Respondents in accordance with this paragraph.

(A) Release Assessment and Containment.

Respondents shall continue to monitor the Holden facility for releases or threats of releases of PCBs which may pose an immediate danger to human health or welfare or the environment

and, with respect to such releases or threats of releases, contain such releases or take appropriate actions to eliminate such threats of releases. Within twenty (20) work days of the effective date of this CONSENT ORDER, Respondents shall submit a detailed report to EPA regarding all actions that have been undertaken to the effective date of this CONSENT ORDER, to comply with the AOC, Docket No. 86-F-0019, Statement of Work - paragraph 1.

(B) Site Stabilization. Respondents shall continue to monitor the Holden facility to stabilize the site to reduce immediate risks of releases of PCBs that threaten human health or welfare or the environment as determined by EPA's OSC or Project Coordinator. Such stabilization shall include continued compliance with the AOC Statement of Work - paragraph 2. Within twenty (20) work days of the effective date of this CONSENT ORDER, Respondents shall submit a detailed report to EPA regarding all actions that have been undertaken to the effective date of this CONSENT ORDER to comply with the AOC, Docket No. 86-F-0019, Statement of Work - paragraph 2.

(C) Site Security - Respondents shall continue to restrict access and provide security to the site in accordance with the AOC, Docket No. 86-F-0019, Statement of Work - paragraph 3. The EPA expressly acknowledges that the Respondents have a qualified right of access at the Holden

facility and EPA agrees to exercise reasonable use of its statutory powers to regain access if the City of Holden and/or Lear Siegler, Inc. restrict the Respondents' access to the Holden facility and if the Respondents have exercised best efforts to regain said access.

(D) Site Survey - Respondents shall, within ten (10) work days of the effective date of this CONSENT ORDER, submit a detailed sampling and inventory report relating to all work performed pursuant to the AOC, Docket No. 86-F-0019, Statement of Work - paragraphs 5 and 6. The sampling report shall include at a minimum: (1) results obtained from analyzed samples taken at the Holden facility, including air sampling, samples taken from all area sampling grids and all water, sediment, storm drain, sewer drain, and wipe samples; (2) quality assurance/quality control efforts and results including use of duplicate samples, spike samples and blank samples; and (3) all chain of custody and field sheets for all samples taken. The inventory report shall include all data, measurements, or other information that has been collected by the Respondents relating to each PCB item and all other PCBs at the Holden facility. The inventory report shall include a description of all codes utilized by the Respondents in conducting their site inventory.

(E) Work Plans. Respondents shall, within ten (10) work days of the effective date of this

CONSENT ORDER, revise and resubmit the Work Plans required by the AOC, Docket No. 86-F-0019, Statement of Work - paragraph 6. The Respondents may modify and utilize such plans as appropriate to comply with the provisions of this CONSENT ORDER.

2. Upon approval by EPA of all reports, plans or other documents submitted pursuant to Article V.C., the requirements of the AOC, Docket No. 86-F-0019, except for the surviving provisions identified in Article V.C.3. and as otherwise provided for in this CONSENT ORDER, shall be satisfied and terminated. The EPA shall notify Respondents of this approval and that the requirements of the AOC, Docket No. 86-F-0019, are satisfied and that work conducted under the said AOC was conducted in accordance with the National Contingency Plan, 40 C.F.R. Part 300.

3. The following provisions and/or requirements shall survive the notification by EPA that the provisions of the AOC, Docket No. 86-F-0019, have been satisfied and terminated: Article VI.B., Records; Article VI.C.1., Access to the Site; Article VI.E., Liability; Article VI.G., Record Preservation; Article VI.K., Reservation of Rights; and Article VI.L., Other Claims.

ARTICLE VI - PROCEDURAL AND LEGAL PROVISIONS

A. Authorized Representatives

1. The Respondents, as a single entity, hereby designate the below-named individual (and alternate) as the single representative who shall be authorized to represent

each and every Respondent in all matters pertaining to this CONSENT ORDER. Said representative (hereinafter the "Respondents' Executive") shall have authority both to receive all reports, comments, notifications, and other correspondence from EPA pursuant to this CONSENT ORDER and convey decisions on behalf of the Respondents. The Respondents have the right to change the said Respondents' Executive or alternate by notifying EPA in writing at least five (5) calendar days prior to said change.

Mr. Jene L. Robinson
500 S. 27th Street
Decatur, Illinois 62525
217-424-6834

(Alternate)
Mr. Jay Pruett
P.O. Box 21106
428 Travis Street
Shreveport, Louisiana 71156-0001
318-221-2604

2. On or before the effective date of this CONSENT ORDER, the Respondents shall designate a Project Coordinator, if other than the Respondents' Executive, or after said effective date if the Respondents decide to divide the responsibilities of the said Executive and Project Coordinator. EPA's Project Coordinator is identified in Article VI.A.3. Each Project Coordinator shall be responsible for overseeing the implementation of the provisions of this CONSENT ORDER. Communications between the Respondents and EPA that concern technical issues and/or matters shall be directed through the EPA Project Coordinator and the Respondents' Executive and/or the Respondents' Project Coordinator. The Respondents and

EPA each have the right to change their respective Project Coordinator(s). Such change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to said change.

3. All correspondence, reports, work plans and other writing required under the terms of this CONSENT ORDER, to be submitted to EPA, shall be sent to the EPA's Project Coordinator:

Mr. Steven Kinser, Project Coordinator
Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

B. Record Preservation and Availability of Information

1. Respondents, and/or their designated agents, shall preserve, during the pendency of this CONSENT ORDER and for a minimum of seven (7) years after its termination, at least one copy of all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, or contractors which relate in any way to the Holden facility or work performed pursuant to this CONSENT ORDER, notwithstanding any document or record retention policy to the contrary. Such records include, but are not limited to, sampling records, results of analyses, chain-of-custody records, manifests, trucking logs, receipts, reports, records of destination of PCBs, correspondence and other documents

created or produced pursuant to this CONSENT ORDER. After this seven year period, the Respondents shall notify EPA at least sixty (60) calendar days prior to the destruction of any such document. Upon request by EPA, the Respondents shall make available to EPA such records or documents, or copies thereof, provided they are not attorney work-product or subject to the attorney-client privilege, if requested by EPA within the said sixty (60) day period.

2. Upon written request from EPA, Respondents shall promptly, but in no instance longer than ten (10) calendar days after request by EPA, make available to EPA all scientific or technical data in their possession or control generated by the Respondents, or on behalf of the Respondents, that concern the Holden facility. Scientific and/or technical data shall include, but is not limited to, all records specifically identified and described in Article VI.B.1. and all background or preliminary records or documentation that are used in any way as a basis for any reports or studies required by this CONSENT ORDER. Upon request, EPA will make available to Respondents all sampling and analytical data (including split samples) and hydrological or geological information in its possession that pertains to the Holden facility.

3. The Respondents may assert a business confidentiality claim covering part or all of the information submitted under this CONSENT ORDER in the manner set out in 40 C.F.R. § 2.203(b). The information covered by such a claim will be

disclosed by EPA only to the extent, and by the means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B (1986). If no confidentiality claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Respondents.

4. All records submitted to EPA pursuant to this Article shall be sent to the designated EPA Project Coordinator.

5. The terms and provisions of this CONSENT ORDER shall not be interpreted or construed as preventing EPA from requesting information or records pursuant to its authorities under the law.

C. Access to the Site

1. Respondents shall grant EPA and/or its authorized representatives the authority to enter and freely move about all areas at the Holden facility at all reasonable times for the purposes of, inter alia: inspecting records; reviewing the progress of the Respondents in carrying out the provisions of this CONSENT ORDER; conducting such tests and taking such samples as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. With the exception of documents covered by the attorney-client privilege or attorney work-product, the Respondents shall permit EPA or its authorized representatives to inspect and copy all records, files, photographs, documents and other writings (including all sampling and monitoring data) which in any way pertains to work undertaken

pursuant to this CONSENT ORDER. At the request of the Respondents, EPA and/or its authorized representatives shall allow the Respondents to split or duplicate any samples collected by EPA and/or its authorized representatives.

2. The City of Holden and/or Lear Siegler, Inc. have provided access to Respondents as necessary for the Respondents to implement the terms of the AOC, Docket No. 86-F-0019, and such access continues to be effective as of the date of this CONSENT ORDER. To the extent that the Holden facility or properties adjacent to the Holden facility are controlled by parties other than those bound by this CONSENT ORDER and that access to the Holden facility or properties adjacent to the Holden facility is necessary to fulfill the conditions of this CONSENT ORDER, including the accompanying Statement of Work, the Respondents will use their best efforts to obtain/maintain access. In the event that such necessary access agreements cannot be obtained, or if obtained, are revoked by entities controlling access to the Holden facility or property near the Holden facility, Respondents shall notify EPA. If the Respondents cannot obtain or lose access, despite best efforts, EPA agrees to exercise reasonable use of its applicable statutory authority to assist the Respondents in obtaining such access where voluntary access is denied. Nothing contained herein is intended to relieve the Respondents from complying with any clause or provision in existing agreements

setting out rights or obligations of the Respondents being given access to the Holden facility or property near the Holden facility.

3. Nothing herein shall be construed as restricting the inspection or access authority of EPA under federal law or regulations.

D. Reimbursement of Costs

Pursuant to Article V.B., the Respondents shall reimburse EPA for costs EPA incurs, not inconsistent with the National Contingency Plan, in connection with overseeing and reviewing the conduct of the RI/FS. Within one hundred-twenty (120) calendar days after the end of each Federal fiscal year, EPA shall submit to the Respondents an accounting of all such costs incurred in overseeing and reviewing the conduct of the RI/FS during the previous fiscal year. The Respondents shall, within thirty (30) calendar days of receipt of that accounting, forward a cashiers check for the amount of said costs made payable to the Hazardous Substance Superfund. Checks should specifically reference the identity of the site and the docket number of this CONSENT ORDER and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251
Attention: Superfund Collection Office

A copy of the transmittal letter and cashier's check shall be sent to the EPA Project Coordinator by the Respondents.

E. EPA Oversight

The EPA may appoint an On-Scene Coordinator (OSC) who shall have the authority vested by the National Contingency Plan at 40 C.F.R. Part 300. This includes the authority to halt, conduct or direct any activities required by this CONSENT ORDER and/or any response actions or portions thereof when conditions present an imminent and substantial endangerment to the public health or welfare or the environment or when necessary to assure that such activities or actions are not inconsistent with the National Contingency Plan. The OSC, or any person designated by the OSC, will have the right to move freely about the Holden facility at all times when work is being carried out pursuant to this CONSENT ORDER. In the absence of designation of an EPA OSC, EPA's Project Coordinator shall assume the authorities specifically provided for herein.

F. Liability

1. Neither the United States nor any agency or agents or employees thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this CONSENT ORDER, nor shall the United States or any agency or agents or employees thereof be

held out as a party to any contract entered into by the Respondents in carrying out activities pursuant to this CONSENT ORDER. This paragraph does not apply to any agency of the United States that has been identified as a potentially responsible party at the Holden facility.

2. Nothing in this CONSENT ORDER, including its attachments, is intended to be, nor shall it be, an admission of fact or law, an estoppel or waiver of defenses for any purpose except as expressly provided herein. Nothing herein is intended to be, nor shall it be, a release or settlement of any private claims or injuries known or unknown to persons or property of any private person or local government agency.

3. Except as provided for in Article VI.N.4., nothing in this CONSENT ORDER, including its attachments, is intended to be, nor shall it be, a final settlement of liabilities between EPA and Respondents with respect to environmental conditions that exist at the Holden facility.

4. Except for the penalties provided for in Article VI.G. and P., the costs incurred by Respondents in complying with the provisions of this CONSENT ORDER are not intended to be and shall not be construed as penalties.

G. Penalties for Non-Compliance

1. Upon notification by EPA, the Respondents shall be subject to and pay stipulated penalties, that have not been forgiven pursuant to Article VI.G.5., as follows

for each day Respondents fail to meet the time deadlines required in Articles V.A.2., V.A.3., V.B.4. and V.C. of this CONSENT ORDER:

<u>Days After Due Date</u>	<u>Penalty</u>
1-10	\$250.00
11-	\$500.00

2. Stipulated penalties shall accrue as follows for each day Respondents fail to meet interim time deadlines for implementation of either the RI/FS (except Articles V.A.2. and V.A.3.) or Removal Work Plans:

<u>Days After Due Date</u>	<u>Assessment For Each Day</u>
1-10	\$250.00
11-21	\$500.00
21-	\$1000.00

3. Upon notification by EPA, the Respondents shall be subject to and pay stipulated penalties, that have not been forgiven pursuant to Article VI.G.5., at the rate of \$5,000 for each day Respondents fail to meet final completion time deadlines set forth in either the Removal Work Plan or the RI/FS Work Plan. The Respondents shall be subject to and pay stipulated penalties under this paragraph, unless and to the extent a time delay is granted under the provisions of Article VI.K., Delay in Performance.

4. Where the Respondents fail to meet the interim time deadlines provided for in Article VI.G.2., EPA shall forgive the relevant accrued interim deadline stipulated penalties, if and when Respondents meet the final completion time deadlines set forth in the Removal Work Plan or RI/FS Work Plan.

5. Any stipulated penalties which are due under Articles VI.G.1., VI.G.2., or VI.G.3. may be forgiven by EPA at the Agency's election.

6. All stipulated penalties paid under Article VI.G. shall be payable by cashiers check to the Hazardous Substances Superfund. Checks shall specifically reference the identity of the site and the docket number of this CONSENT ORDER and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251
Attention: Superfund Collection Office

7. Any stipulated penalty paid by the Respondents under this Article V.I.G., constitute a credit against penalties imposed by EPA under Section 106(b) of CERCLA, as amended, and against punitive damages imposed by EPA under Section 107(c)(3) of CERCLA, as amended. This credit provision shall not apply to violations of this CONSENT ORDER not specified in this Article VI.G.

H. Other Applicable Laws

1. All actions required to be taken pursuant to this CONSENT ORDER shall be undertaken in accordance with legally relevant and applicable EPA policies and with the requirements of all applicable local, state and federal laws and regulations, including the PCB rules and regulations at 40 C.F.R. Part 761, as determined by EPA.

2. To the extent that compliance with any federal, state, or local law, or requirement is delayed despite Respondents good faith effort to comply, EPA agrees that the Respondents are not thereby in violation of this CONSENT ORDER nor the applicable law or regulation.

I. EPA Review

Following EPA's receipt of any submittal, plan, report, schedule, or any part or refinement or revision thereof, required to be submitted by the Respondents to EPA pursuant to this CONSENT ORDER, EPA shall review such submittal, plan, report, or schedule in an expeditious manner and notify the Respondents in writing of its approval or disapproval or modification of the submittal, plan, report, schedule, or any part or further refinement or revision thereof. In the event of any disapproval or modification, EPA shall specify in detail both the deficiencies and reason(s) therefore. Any submittal, plan, report, schedule, or any part or further refinement or revision thereof, which is approved by EPA and performance of which is not contingent upon determining or proceeding with a disapproved or modified part of the submittal, plan, report or schedule shall, on the date of such approval, become final for purposes of this CONSENT ORDER.

J. Resolution of Disputes

1. As to any submittal, plan, report, schedule, or any part or refinement or revision thereof, for which EPA has

provided the Respondents a written notice of disapproval pursuant to the provisions of this CONSENT ORDER, the Respondents shall, within fourteen (14) calendar days of receipt of such notice either:

(A) modify and resubmit to EPA such submittal, plan, report, or schedule, or portion thereof, revised to eliminate the deficiencies or unacceptable provisions therein as specified by EPA, in which case the disputed submittal, plan, report, or schedule, or refinement or revision thereof, shall become final for purposes of this CONSENT ORDER upon written notification of EPA's approval; or

(B) confer with EPA in an attempt to achieve agreement on the disputed submittal, plan, report, or schedule, or any part or refinement or revision thereof. If agreement can be achieved by such conference, it will be memorialized in a joint memorandum between the parties and the disputed submittal, plan, report, or schedule, or any part or refinement or revision thereof, shall become final for purposes of this CONSENT ORDER on the effective date of such memorandum.

2. If agreement concerning the disputed submittal, plan, report, or schedule, or any part or refinement or revision thereof, cannot be achieved by means of the procedures set out in Article VI.J.1.(A) and (B), Respondents may either request a conference before the Regional Administrator or present a written presentation to the Regional Administrator (or both)

in an attempt to resolve said disputed matter(s). Respondents' request for a conference or submission of a written presentation (if a conference is not requested) must be received by EPA within ten (10) work days of receipt by Respondents' Executive or Project Coordinator of any written notice of disapproval. Within twenty (20) work days of receipt of any notice of disapproval by the Respondents' Executive or Project Coordinator, or within ten (10) work days of said conference (or receipt of the written presentation, if a conference is not requested) whichever occurs later in time, the Regional Administrator shall provide the Respondents a written decision regarding said disputed matter(s) and advise the Respondents to take such actions as are appropriate to achieve the goals of this CONSENT ORDER.

3. None of the foregoing provisions shall prohibit any party from pursuing appropriate judicial or other remedies as provided by law on the disputed portions of any submittal, plan, report, or schedule; or from seeking such further and additional relief; or from undertaking such response actions as may be necessary to protect human health or welfare or the environment.

4. If agreement concerning any disputed submittal, plan, report, or schedule, or any part or refinement or revision thereof, cannot be achieved by means of the procedures set out in Article VI.J.1. (A) and (B), and if Respondents request either a conference before the Regional Administrator

or present a written presentation to the Regional Administrator (or both) pursuant to Article VI.J.2., and if such a disagreement and subsequent review by the Regional Administrator causes a delay that would subject Respondents to stipulated penalties under Article VI.G., such stipulated penalties shall continue to accrue. To the extent the Regional Administrator's written decision under Article VI.J.2. totally adopts Respondents' position with respect to a disagreement, the relevant accrued stipulated penalties shall be forgiven and an appropriate time extension relevant to a disputed matter and at least equal to the delay caused by the institution of the process described in Article VI.J.2. shall be granted in the Regional Administrator's written decision. To the extent the Regional Administrator's written decision under Article VI.J.2. either totally adopts EPA's position or partially adopts Respondents' position and partially adopts EPA's position with respect to a disagreement, the amount of the accrued stipulated penalties, if any, resulting from the delay caused by the institution of the process described in Article VI.J.2. shall become due and payable as specified in the Regional Administrator's written decision.

5. The time periods of Article VI.J. may be extended by the written agreement of the parties involved.

K. Delay in Performance

1. If any event occurs which causes delay in the achievement of any of the requirements of this CONSENT ORDER,

despite the Respondents' good faith efforts, the Respondents shall promptly notify EPA's On-Scene Coordinator and/or Project Coordinator orally within seventy-two (72) hours of the event and shall, within seven (7) calendar days of said oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondents intend to implement said measures. For purposes of this CONSENT ORDER, such events are defined as any event arising from circumstances beyond the reasonable control of the Respondents which could not be overcome by good faith efforts, including but not limited to: inability to obtain materials or otherwise perform due to an act of God, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, labor disputes; delay caused solely by EPA or other government agencies or their contractors; or delay in obtaining or maintaining access. Increased costs of performance of the terms of this CONSENT ORDER, except exceptional, commercially impractical disposal costs as specified in Article VI.K.4., shall not be considered circumstances beyond the control of the Respondents. The Respondents shall adopt all reasonable measures to avoid or minimize delays, which shall include use of alternate disposal facilities in the event any original chosen disposal facility becomes unavailable for any reason.

2. The EPA, through its Project Coordinator, shall acknowledge the Respondents' notice of delay and consider granting any appropriate time extension by letter to the Respondents' Executive or Respondents' Project Coordinator. Disputes concerning the period of additional time necessary to complete work shall be resolved through Article VI.J., Resolution of Disputes.

3. In the event EPA agrees that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondents, such delay shall not be deemed a violation of either this CONSENT ORDER or applicable law and the time for performance hereunder shall be extended for an appropriate period of time. An extension of time granted by EPA in complying with an incremental step in any schedule established pursuant to this CONSENT ORDER may extend for a time period exceeding the delay time period and may extend each subsequent step.

4. The EPA and Respondents acknowledge that conditions at off-site storage, treatment, or disposal (TSD) facilities may require the Respondents to cease sending wastes to such facilities. The Respondents shall inform EPA of the name and address of each of the Respondents' off-site TSD facilities. Upon receipt of relevant information that EPA has interdicted or is likely to interdict any of Respondents' off-site TSD facilities, EPA's Project Coordinator shall immediately notify the Respondents

of such interdiction or possible interdiction. Upon receipt of the EPA's Project Coordinator's notification that EPA has interdicted one of Respondents' off-site TSD facilities, Respondents shall cease sending Holden facility wastes to the interdicted facility. If EPA interdicts one or more of the Respondents' off-site TSD facilities, EPA - Region VII agrees to: (i) assist the Respondents in identifying the cause for each of the facility's interdiction; (ii) appropriately suspend the time deadlines imposed under the CONSENT ORDER for compliance made impossible because of the interdiction; and (iii) apply the Resolution of Disputes mechanism, Article VI.J., to any disagreement regarding the added time period necessary for the Respondents to identify, submit bids, and contract for the services of a conforming TSD facility. EPA does not intend that Respondents incur exceptional, commercially impractical expense and therefore EPA agrees that the Respondents are allowed sufficient time to negotiate commercial terms should EPA interdict one or more of the Respondents' off-site TSD facilities.

L. Subsequent Modification or Amendment

This CONSENT ORDER may be amended or modified by mutual agreement of EPA and the Respondents, and may include amendments or modifications necessary to address such cleanup or decontamination activities not currently addressed in this

CONSENT ORDER but which are necessary to protect public health or welfare or the environment. Such amendments or modifications shall be in writing and shall have as their effective date, the date on which such amendments or modifications are signed by EPA after Respondents have signed such amendment or modification.

M. Reservation of Rights

1. Notwithstanding compliance with the terms of this CONSENT ORDER, the Respondents are not released from liability for any actions taken by EPA, if any, beyond the terms of this CONSENT ORDER. EPA reserves the right to take, and the Respondents reserve the right to oppose, any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violations of law or of this CONSENT ORDER.

2. The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right to request that the Respondents perform tasks in addition to those required in Article V., of this CONSENT ORDER. The Respondents reserve the right to oppose such requests. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time after first notifying and, if sufficient time exists, conferring with Respondents or their designated representatives prior to initiating any removal or remedial action at the Holden facility. In either

event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States as are not inconsistent with the National Contingency Plan, and Respondents reserve the right to contest any such action.

3. Each Respondent reserves its right to bring any action, including an action for contribution otherwise available against any person, as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(21).

N. Other Claims

1. Except as expressly provided herein and in CERCLA, as amended, no provision in this CONSENT ORDER is intended or shall be construed as a release by any party of any claims, causes of action or demand in law or equity against any person, firm, partnership, corporation or governmental entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances taken to or taken from the Holden facility or otherwise released at or from the Holden facility.

2. This CONSENT ORDER does not constitute preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

3. In entering into this CONSENT ORDER, Respondents waive any right to seek reimbursement under

Section 106(b)(2) of CERCLA, as amended, for any past costs and costs that may be incurred by Respondents in complying with the provisions of this CONSENT ORDER.

4. In accordance with its policies, EPA waives any claims it might have under TSCA to assess civil penalties against any and all Respondents which have arisen or which may arise out of the failure of Rose, Inc. to dispose of any Respondents PCBs, PCB items, and/or PCB-contaminated materials (sent by said Respondent to the Holden facility) within one (1) year from the date when said PCBs, PCB items and/or PCB-contaminated materials were first placed into storage for disposal [40 C.F.R. § 761.65 (a)]. This waiver applies only to the one-year disposal requirement specified in 40 C.F.R. § 761.65 and is expressly conditioned to each Respondent upon:

(A) Respondent having delivered the said PCBs, PCB items and/or PCB-contaminated materials to the Holden facility at least ninety (90) days prior to the expiration of one year from when the PCBs, PCB items, and/or PCB-contaminated materials were first placed into storage for disposal; and

(B) compliance with the terms and provisions of this CONSENT ORDER.

Except as provided for in Article N.4., the Respondents remain liable for the proper disposal of PCBs, PCB-items, and

PCB-contaminated materials under applicable provisions of TSCA and CERCLA. PCBs and PCB items which are presently in storage for disposal at the Holden facility shall be disposed of at either a TSCA-approved landfill or TSCA-approved incinerator within sixty (60) days from the date said PCBs or PCB items are removed and transported from the Holden facility to the TSCA-approved landfill or incinerator. For purposes of complying with the terms of this CONSENT ORDER and with the one (1) year disposal requirement in 40 C.F.R. § 761.65(a) and to facilitate the expeditious clean-up of the Holden facility, EPA has agreed to exercise its enforcement discretion not to seek penalties against off-site disposal facilities for violations of the TSCA one-year disposal requirement as long as PCBs and PCB items are disposed of within the said sixty (60) day time period. The EPA also agrees, in accordance with its TSCA Compliance Program Policy No. 6-PCB-6 dated August 16, 1983, which is herein incorporated by reference as Attachment D, that any off-site disposal facility's failure to dispose of PCBs or PCB items governed by this CONSENT ORDER, within the said sixty (60) days, shall not subject Respondents to penalties under TSCA for any disposal facility's failure to dispose of PCBs or PCB items within the said sixty (60) days.

5. If EPA seeks to recover its past response costs (to the effective date of this CONSENT ORDER), and/or response costs it incurs in overseeing the implementation of this CONSENT

ORDER (excluding costs relating to overseeing the development and implementation of the RI/FS as provided for in Article VI.D.), EPA agrees to use its best efforts to recover said costs from non-participating potentially responsible parties who are identified to EPA under Article VI.S.1.C. EPA asserts that its agreement to use its best efforts to seek recovery of such costs from such non-participating parties is conditional upon there being such non-participating parties who are aggregately responsible for at least 5% of the total of all PCB wastes sent to the Holden facility, based on weight, except that excluded from this calculation are the PCB-wastes of such non-participating parties whose indebtedness or liability, for the subject EPA response costs, has been discharged in a bankruptcy proceeding.

O. Satisfaction and Completion

The requirements of this CONSENT ORDER shall be deemed satisfied upon written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this CONSENT ORDER have been completed. EPA shall notify the Respondents in writing if the reports, one submitted at the completion of activities described in the Statement of Work and the other upon completion of the RI/FS, do not demonstrate that all the terms of this CONSENT ORDER have been completed. In its written notification, EPA shall describe all deficiencies that must be addressed to fully comply with the terms of this CONSENT ORDER. The provisions of Article VI.J., Resolution of Disputes, shall then apply.

P. Failure to Comply

The Respondents are advised that, under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), a Respondent's willful violation or failure or refusal to comply with any provision of this CONSENT ORDER may subject that Respondent to a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues. Under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), a Respondent's failure to comply with any portion of this CONSENT ORDER without sufficient cause, may subject that Respondent to liability for punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of that Respondent's failure to take proper action. Respondents reserve the right to contest, on all bases available in law or equity, any such actions for penalties or damages.

Q. Contribution Protection

1. The parties recognize the possibility that there may be brought or asserted against the Respondents, and such other participating potentially responsible parties identified to EPA pursuant to Article VI.S.1.A. and B., suits or claims for contribution regarding matters addressed in this CONSENT ORDER by persons or entities that have not entered into this settlement (non-participating potentially responsible parties) that might, if successful, obligate the Respondents to pay amounts toward matters addressed in this CONSENT ORDER.

The parties acknowledge that Section 113(f)(2) of CERCLA, as amended by SARA, provides contribution protection to Respondents and other participating potentially responsible parties (identified under Article VI.S.1.A. and B.) for claims for contribution regarding matters addressed under this CONSENT ORDER.

2. The parties represent that this CONSENT ORDER was negotiated in good faith. The Respondents, solely for the purpose of conformance with the work under this CONSENT ORDER, as it may be amended, may assume responsibility for work exceeding the Respondents' equitable share, either individually or collectively. To the extent that such occurs, the Respondents intend to seek contribution from those non-participating potentially responsible parties who have been identified by the Respondents pursuant to Article VI.S.1.C. The parties agree that federal law should govern questions of contribution. The parties agree that, in determining the appropriate federal rule of decision to establish the effect of this CONSENT ORDER on possible rights of contribution, a court should adopt the principles set forth in Section 113(f) of CERCLA, as amended by SARA.

3. Each Respondent agrees that with respect to any suit or claim for contribution brought against it for matters covered by this CONSENT ORDER, it will timely notify the EPA of the institution of such suit or claim.

R. Covenant Not to Sue

The EPA covenants not to sue the Respondents and other participating potentially responsible parties, identified by Respondents pursuant to Article VI.S.1.A. and B., for work conducted satisfactorily pursuant to this CONSENT ORDER. This covenant not to sue shall not apply either to conditions unknown on the date EPA provides Respondents written notice, pursuant to Article VI.O., that the requirements of this CONSENT ORDER are satisfied and have been completed or to unanticipated occurrences at the Holden facility and at off-site incineration facilities.

S. Participating Potentially Responsible Parties and Other Parties

1. Respondents shall submit to EPA, on the first day of each month following the effective date of this CONSENT ORDER, the following:

A. a list of potentially responsible parties who have entered into settlements with the Respondents, as determined by Respondents, with respect to each said party's liabilities at the Holden facility relating to the operations of Rose, Inc.;

B. a list of other potentially responsible parties who have not entered into final settlements with the Respondents, but who are participating in the Respondents' efforts to implement appropriate response actions related to the cleanup of the Holden facility as determined by Respondents; and

C. a list of non-participating potentially responsible parties as determined by Respondents.

2. Parties identified by Respondents under Article VI.S.1.A. and B. shall be considered to be "participating potentially responsible parties" for all purposes under this CONSENT ORDER, and parties identified by Respondents under Article VI.S.1.C. shall be considered to be "non-participating potentially responsible parties" for all purposes under this CONSENT ORDER.

T. Opportunity to Confer and Effective Date

In consideration of the communications between the Respondents and EPA prior to the issuance of this CONSENT ORDER, it is agreed that there is no need for a settlement conference prior to the effective date of this CONSENT ORDER. Therefore, the effective date of this CONSENT ORDER shall be the date on which it is signed by EPA after Respondents have signed this CONSENT ORDER.

IT IS SO AGREED AND ORDERED: